HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No.452 OF 2007

Between:

R.Sarangapani and others

. . .Appellants

AND

The Principal Secretary to Government,
Department of Agriculture (Cooperation &
Marketing), Hyderabad and others

. . .Respondents

:: JUDGMENT ::

Counsel for the appellants: Shri P.Srinivasa Rao for
Shri P.Sri Raghu Ram

Counsel for respondent Nos.1 & 2: Government Pleader for
Agriculture & Marketing

Counsel for respondent No.3: None

Counsel for respondent No.4: Shri Resu Mahender
Reddy

6th August, 2007

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Per G.S.SINGHVI, CJ

This is an appeal for setting aside order dated 13.2.2007 passed by the learned Single Judge whereby he dismissed the writ petition filed by the appellants questioning the appointment of respondent No.4 – Thummeti Sammi Reddy as Chairman of Agricultural Market Committee, Jammikunta, Karimnagar District (hereinafter referred to as 'the market committee').

The appellants claim to be the residents of different villages of Jammikunta Mandal, Karimnagar District. Respondent No.4, who was a native of Vennampalli Village, Chityal Mandal of Warangal District purchased agricultural land measuring Ac.1-04 gts. in Mallial Village, Jammikunta Mandal through registered sale-deed Nos.3950 and 3951 dated 26.11.2004, got the same mutated in his name and obtained pattadar passbook. He also applied to the Gram Panchayat for permission to raise construction. After getting the required permission, he undertook and completed the construction in March, 2006. On 16.10.2005, he obtained domestic gas connection from Shri Venkateswara Bharat Gas Agency, Jammikunta. He also purchased livestock i.e. two buffaloes and sixty sheep.

On 19.7.2005 the State Government in exercise of the power conferred upon it by Section 6 (1) read with Section 5 (1) and (2) of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (for short, 'the Act') as amended by Andhra Pradesh (Agricultural Produce and Livestock) Markets Ordinance No.4 of 2005, issued notification dated 19.7.2005 for constituting the market committee with

respondent No.4 as its Chairman.

It is borne out from the record that just before the appointment of respondent No.4 as Chairman of the market committee, the appellants' filed Writ Petition No.16221 of 2005 questioning the proposed appointment of respondent No.4 as Chairman and two others as Directors of the market committee. The same was disposed of by the learned Single Judge on 15.9.2005 by recording the following order:

> "Heard the learned counsel for the petitioners and the learned Government Pleader for Co-operation appearing for the respondents 1 and 2 and also the learned counsel appearing for respondents 3 to 5.
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> The only grievance of the petitioner is that the respondents 3 to 5 are involved in some irregularities in respect of selling of cotton and so, such persons cannot be considered for appointment as Chairman and Directors of the Committee. But, it is a case where appropriate decision has to be taken by the government. If any tangible evidence is available with the petitioner, he can make a representation to the government and thereafter the government shall take a decision thereon in accordance with law."

By taking cue from the observations contained in the aforementioned order, the appellants' made complaints and representations to the government alleging that respondent No.4 is not eligible to be appointed as Chairman of the market committee. The Commissioner and Director (Marketing), Hyderabad (respondent No.2) referred the matter to Joint Collector and Additional District Magistrate, Karimnagar for enquiry. The latter issued notice to the petitioners and respondent No.4. After analyzing the documents filed by the parties, the Joint Collector submitted report dated 2.5.2006, the relevant portions of which are extracted below:

> "IV. Finally, regarding the complaint about the residence status of the Chairman, AMC, Jammikunta, Sri T. Sammi Reddy, the lack of supporting documentary evidences produced in support of his claim warrants a closer examination of the matter.
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> Ø The date of appointment of Sri T. Sammi Reddy as Chairman, AMC Jammikunta, as per G.O.Ms.No.288, Agrl. & Co-op (Mktg

1-2) Dept., Dt.19.7.2005 assumes significance in determining his residence status as it is clearly stipulated in Chapter III. The A.P. (Agrl Produce and Livestock) Markets Act that the members of a Market Committee are to be appointed from various categories as notified, from the growers of agricultural produce, owners of livestock and products of livestock in the notified area, from whom the Chairman and Vice-Chairman are to be appointed.

- Ø When the criteria stipulated is that the Members should be either "growers" of agricultural produce or "owners" of livestock and products of livestock "in the notified area", it can be deducted that the Member is assumed to be ordinarily in the notified area to grow crops/own livestock.
- Ø Sti T. Sammi Reddy is originally a native of Nennampalli (V), Chityala (M) of Warangal District, and he admittedly used to reside in Khairtabad, Hyderabad with his family where he has been enrolled as a voter at Sl.No.622, 210 – Khairtabad Assembly Constituency, Hyderabad (EPIC No.AP/ 312100165305), as per the 2004 Electoral Roll.
- Ø He submitted a copy of the letter to the Asst. Municipal Commissioner, Circle No.5, Municipal Corporation, Hyderabad Dt.5.10.2005, for deleting his name from the Voter's list at Khairtabad A/C, Hyderabad, which clearly indicates he was an enlisted voter at the time of appointment vide G.O.Ms.No.28, Agrl. & Co-op (Mktg. 102) Dept., Dt. 19.7.2005.
- Ø Sri T. Sammi Reddy has been included in the 2003 corrected voters list, pertaining to the 2004 electoral roll, at Polling Station No.110, Jammikunta, 252-K Kamalapur Assembly constituency, which clearly indicates that Sri T. Sammi Reddy was enlisted as a voter in 2 places simultaneously, during 2004, which is an electoral offence.
- Ø Sri T. Sammi Reddy is yet to procure a ration card at Karimnagar District in support of his residency claim, whereas in contradiction, his ration card No.1118 is at Hyderabad. He has produced a copy of the letter for cancellation of ration card No.118 FP Shop No.716, Hyderabad, to the Asst. Supply Officer, Circle No.7, Hyderabad, which is dt.10.8.2005.
- Ø He now claims to be a resident of H.No.6-3-50/1, Ganeshnagar, Jammikunta (V) and (M), Karimnagar District since "several years", and as per the report of the MRO Jammikunta, since (5) years, but this information does not seem to be credible.
- Ø Sri T. Sammi Reddy obtained permission from the Gram Panchayat Office for building his house at Jammikunta (V) and (M), dt.09.2.2005, land he recently completed constructing his

house on 17.3.2006.

- Ø The domestic gas connection (SV No.1606647440) issued by Sri Venkateswara Bharat Gas Agency, Jammikunta in his name, at the address given by him is a recent one, dt.16.10.2005.
- Ø The agricultural lands at Mallial (V), Jammikunta (M) to an extent of Ac.1.04 guntas at Mallial (V), Jammikunta (M) was recently purchased by Sri T. Sammi Reddy, as per sale deed Nos.3950 and 3951, dt.26.11.2004, and the Pattadar Pass Book was also issued on 4.12.2005 (Pattadar Pass Book No.287256, issued on 4.12.2005.
- Ø He has also submitted copies of residency certificate issued by the Panchayat Secretary, Jammikunta, dt.15.2.2005, which in view of the above does not seem to be very accurate either.
- Ø To prove he is an owner of livestock, he has also submitted a certificate of the Veterinary Doctor that Sri T. Sammi Reddy owns (2) Buffaloes and (60) sheep, dated 10.2.2005.

After considering the available material documents and the existing guidelines vide Section 6 (1) read with Section 5 (1) and (2) of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966, it is apparent that Sri T. Sammi Reddy was not ordinarily a resident of Jammikunta (V) and (M), till sometime before the selection of the members to Jammikunta AMC in July 2005. The motive behind this move may be to nurture a political career in the District. It is evident that he has moved to Jammikunta (M), Karimnagar District subsequently and has now taken up residence at Jammikunta (V) and (M).

As the powers for constituting a Market Committee, its composition and appointment of its Members vests with the Government, I am sending this report for further necessary action as per the provisions of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966."

The State Government did not accept the conclusion recorded by the Joint Collector and issued Memo dated 2.1.2007 rejecting the complaint of the appellants.

The appellants challenged Memo dated 2.1.2007 in Writ Petition No.2277 of 2007, which was dismissed by the learned Single Judge by observing that respondent No.4 was qualified to be appointed as Chairman of the market committee in terms of Section 5 (1) read with Section 2 (iv) of the Act. The learned Single Judge referred to the

documents produced by respondent No.4 before the Joint Collector and held:

> "… Once it had emerged that the fourth respondent not only held the agricultural land, but also is resident of Jammikunta Village, there was absolutely no basis for the allegation made by the petitioners. It is not known as to what exactly was the purport of the reference by the Government to the Joint Collector. However, the Joint Collector has chosen to place her own interpretation of various provisions and in a way had far exceeded the scope of the reference. The following observation in the report discloses the same:
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> > "When the criteria stipulated is that the members should be either growers of agricultural produce or owners of livestock and products of livestock in the notified area, it can be deduced that the member is assumed to be ordinarily residing in the notified area to grow crops/own livestock."
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> Even otherwise, the report itself clearly discloses that the fourth respondent is not only a grower, but also a resident. Though Section 5 in terms does not require that an individual must be a resident of a village for the notified area, the necessity to delve into that aspect does not exist in view of the facts referred to above. The impugned memo has simply stated that the allegations made against the fourth respondent stood rebutted. The memo is not referable to any statutory provisions. If the petitioners are still of the view that the fourth respondent does not satisfy the conditions stipulated under Section 5 of the Act, it is for them to file a suit and seek necessary declaration. This Court does not find any basis to interfere with the impugned memo."

Shri P. Srinivas Rao, learned counsel for the appellants reiterated the arguments advanced before the learned Single Judge and submitted that the appointment of respondent No.4 as Chairman of the market committee is liable to be annulled because he is neither a grower nor he can be considered as owner of livestock. Learned counsel emphasized that respondent No.4 has been residing in Khairtabad at Hyderabad and is a voter in Khairtabad Assembly Constituency and argued that he cannot be treated as a grower

residing within Jammikunta Mandal. He then submitted that purchase of land by respondent No.4 in November 2004 and issue of pattadar passbook in his favour on 4.12.2005 is not sufficient to make him eligible for appointment as Chairman of the market committee.

Shri Resu Mahender Reddy referred to the averments contained in paragraph 8 of affidavit dated 17.7.2007 filed by his client and argued that his appointment as Chairman of the market committee squarely falls within the ambit of Section 5 (1) of the Act. Learned counsel submitted that enrollment of respondent No.4 in two Assembly Constituencies cannot lead to an inference that he is not an agriculturist of Jammikunta Mandal or that he does not own livestock within the contemplation of Section 5 (1).

We have considered the respective submissions.

Section 2(iv), which defines the term "grower" and Section 5(1), which deals with composition of market committee, read as under:

> "**2. Definitions:-**
>
> (iv) 'Grower' means a person, who produces by himself or by hired labour or otherwise, or receives under tenancy agreement, the agricultural produce, but does not include a dealer or commission agent in such produce, although he may be a grower of such produce.
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> If any question arises as to whether a person is a grower or not, the decision of the Director of Marketing thereon shall be final:
>
> **5.Composition of Market Committee**:- (1) Every Market Committee shall consist of eighteen members and shall be constituted by the Government by notification in the following manner,--
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> (i) eleven members to be appointed by the Government in consultation with the Director of Marketing from among the following categories of growers of agricultural produce, owners of livestock and products of livestock in the notified area, namely :-
>
> (a) growers of agricultural produce who are small farmers;
>
> (b)growers of agricultural produce other than small farmers;
>
> (c) owners of livestock and products of livestock:
>
> Provided that there shall at least be five members from among persons belonging to Scheduled Castes, Scheduled Tribes,

Backward Classes, minorities and women;

Provided that there shall be at least two members representing the category of small farmers;"

A reading of the above reproduced provisions makes it clear that every market committee shall consist of eighteen members, eleven of whom should be from among the growers of agricultural produce, owners of livestock and products of livestock in the notified area.

In the light of the above, it is to be seen whether respondent No.5 falls in either of the categories. A careful scrutiny of report dated 2.5.2006 submitted by Joint Collector, Karimnagar clearly establish that respondent No.4 has not only purchased agricultural land in Mallial Village, Jammikunta Mandal, but also raised construction after obtaining permission from the competent authority of the Gram Panchayat. Not only this, he owns livestock i.e. two buffaloes and sixty sheep. The appellants have not questioned this part of the report of the Joint Collector. Therefore, their challenge to the eligibility of respondent No.4 to be appointed as Chairman of the market committee has to be treated as clearly misconceived. The observation made by the Joint Collector that respondent No.4 cannot be treated as ordinary resident of Jammikunta Village and Mandal was based on no evidence whatsoever. Therefore, the learned Single Judge did not commit any error by discarding the same. The mere fact that respondent No.4 is also residing in Khairtabad, Hyderabad in connection with the education of his children cannot lead to an inference that he is not a resident of Jammikunta Mandal or that he does not fall within the ambit of Section 5 (1) despite the fact that he owns agricultural land and livestock in Mallial Village, Jammikunta Mandal. In paragraph 8 of his affidavit, respondent No.4 has clarified his position in the following words:

"8. … I submit that I participated in the enquiry conducted by the Joint Collector and submitted all relevant documents i.e. pahanies,

pattadar passbooks, voters list, house permission, tax receipts, residential certificates, bona fide certificates, birth certificates etc. and stated before the authority as I am the permanent resident of Jammikunta Village since 1979. My childhood passed at Jammikunta Village and my studies were commenced at Zilla Parishad, Secondary School (Boys), Jammikunta Village, Karimnagar District and I am residing in vacant house of my aunt bearing grampanchayat No.5-1-68, Jammikunta Village and Mandal, Karimnagar District. Further stated that I have constructed a house on my site in Jammikunta Village with due sanctions and permission from the concerned authorities. Apart from my residence, I have agricultural land admeasuring Ac.1-21 ½ gts., in Sy.No.793/A2 and Ac.1-04 ½ gts. in Sy.Nos.50/A and 50/B of Jammikunta Village where I am conducting my agricultural operations and also possessing buffaloes, sheep etc. Further I stated before the Joint Collector that my name is also registered with electoral register of Jammikunta Village which is also evident from the latest voter list of 2004 with the constituency No.252-Kamalapuri Constituency and further stated before him that I shifted my family to Khairtabad for the purpose of education of my children as such I requested the Joint Collector not to consider the false complaint of appellants herein. I submit that while passing such report the Joint Collector rejected all the allegations made by the appellants against me except with regard to my residence with wrong conclusion. I further submit that I am enrolled in the Jammikunta Village as a voter prior to 1989 and I am casting my vote till date since from 1989. Further, the Joint Collector, Karimnagar District while passing report with regard to my residence did not verified the total records as per my oral submissions to pursue the voter list of Jammikunta which evidences I am enrolled as a voter prior to 1989 and sincethen casting vote. I submit that the Joint Collector, Karimnagar submitted report, dated 2.5.2006 on unappreciable conclusion that I was not ordinarily a resident of Jammikunta till sometime before the selection of the members to Jammikunta AMC in July, 2005 as shifted to Karimnagar District to nurture a political career. The other allegations made in the para No.8 are reiteration of earlier allegations therefore warns no reply."

The appellants have not filed counter to the above averments. Therefore, we do not find any valid ground to record a finding that respondent No.4 is not eligible to be appointed as Chairman of the market committee.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.844 of 2007 filed by the appellants for interim relief is also dismissed.

Before parting with the case, we deem it proper to observe that after disposal of Writ Petition No.16221 of 2005, the appellants had filed Writ Petition No.23265 of 2006 questioning the legality of notification dated 19.7.2005, but the same was dismissed on 5.1.2007 because, in the meanwhile, the State Government had issued Memo dated 2.1.2007.

G.S.SINGHVI, CJ

6th August, 2007

C.V.NAGARJUNA REDDY, J

svs